

EXHIBIT 4

Part 4

Blog Post

No Twist on Pretzel Crisps on Remand

September 18, 2017

In a 54 page decision issued on September 6, 2017, the Trademark Trial and Appeal Board (the “Board”) ended (again) a long-standing dispute between snack food makers Frito-Lay, Inc. (“Frito”) and Princeton Vanguard, LLC (“Princeton Vanguard”) over the registrability of Princeton Vanguard’s PRETZEL CRISPS trademark. Frito claimed that “Pretzel Crisps” was a generic term that all parties are entitled to use to describe pretzel-style chips.

Princeton Vanguard launched its PRETZEL CRISPS brand in 2004. After receiving patent protection for its flattened pretzels, Princeton Vanguard registered the PRETZEL CRISPS brand, first on the Supplemental Register at the launch and then applying to register the mark on the Principal Register in 2009.

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Frito challenged both marks at the Board, arguing that the name was either generic or, at the very least, a highly-descriptive and unprotectable name for the cracker-like products Princeton Vanguard was selling. The Board agreed with Frito. In holding the term “Pretzel Crisps” to be a generic term for flattened, crispy, pretzel-shaped snacks, the Board cited dictionary definitions, evidence of use by the public, references in the media, third-party food industry terminology, and some evidence of use by the defendant itself.

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Although Princeton Vanguard noted during the proceedings that no other company used the combined term before the launch of PRETZEL CRISPS in 2004, being the originator of a term had little weight in considering whether the term was generic. In making its determination, the Board reasoned that “Pretzel Crisps” should be treated as merely a compound word of standard terms, rather than a more complex “phrase.” Under Board precedent, phrases need to be considered holistically, but compound words are simply analyzed by the common meaning of their constituent words. *Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC*, 109 USPQ2d 1949 (TTAB 2014).

Princeton Vanguard appealed to the Federal Circuit.

Appeal

In a decision issued on May 15, 2015, the Federal Circuit vacated and remanded the Board's decision for further proceedings, finding the Board applied the wrong legal standard for genericness. *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960 (Fed. Cir. 2015).

The Board's analysis rested on a distinction between two lines of cases. According to the Board, if a mark is compound, then *In re Gould Paper Corp.*, 834 F.2d 1017 (Fed. Cir. 1987) applied, allowing it to analyze the terms individually. If on the other hand, the mark is a phrase, then *In re American Fertility*, 188 F.3d 1341 (Fed. Cir. 1999) applied, requiring the Board to consider the mark in its entirety.

The Federal Circuit clarified that there was only one legal standard for genericness: the two-part test set forth in *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987 (Fed. Cir. 1986). Under this test, to determine whether a mark is generic, the Board must identify the genus of goods at issue and then assess whether the public understands the mark, as a whole, to refer to that genus. The test is the same regardless of whether the mark is a compound term or a phrase. The case was therefore remanded for further consideration of the possible genericness of "Pretzel Crisps" under the proper test.

Remand

On remand, the Board quickly answered the first question of the *Marvin Ginn* test: the genus of the goods was described in Princeton Vanguard's identification of goods in the application and registration, namely "pretzel crackers." The Board then turned to the second question of the *Marvin Ginn* test, namely, whether the relevant public understands "Pretzel Crisps" to refer to pretzel crackers. As the Federal Circuit instructed, the Board was required to determine the public perception of "PRETZEL CRISPS" as a whole.

However, even reviewing the mark as a whole, the Board stated that it was appropriate as a first step to analyze the constituent terms in the mark. In analyzing the constituent terms "pretzel" and "crisps," the Board considered evidence such as dictionary definitions and third party references such as product reviews and advertisements. The record contained a wealth of evidence that the term "pretzel crisps," taken as a whole, is understood to be a generic term for a pretzel-shaped cracker. There was also evidence that Princeton Vanguard's own use of the term "Pretzel Crisp" was sometimes generic and only sometimes brand-identifying.

Princeton Vanguard's distributors' declarations were found by the Board to be

underwhelming. As the Board viewed it, while the declarations informed of the personal knowledge and opinions of the four declarants, they represented a very small subsection of snack food distributors. Together, they accounted for only about 6 to 10 percent of the distributorship of Princeton Vanguard's product. More importantly, distributors were not end consumers of the product, whose understanding controls in genericness cases such as these. To the extent the distributors' declarations purported to convey the views and comments of end consumers, it was speculation and inadmissible hearsay.

Overall, and taking into account the number of media articles, their sources, and what the contexts show about the authors' recognition of brand names, we find that the media references, product reviews, and the consumer feedback support a conclusion that the term "PRETZEL CRISPS" is more likely to be perceived by the relevant public as a name for a type of snack product that

may derive from multiple sources, rather than as a brand that emanates from a single source.

Slip Op. at 22.

Expert Surveys

Each party proffered the results from a “Teflon” survey conducted to test how consumers perceive the term “Pretzel Crisps.” Teflon surveys are the most common surveys used in “genericide” cases – whether a once original and protected trademark has over time become generic (e.g., “Aspirin,” “Escalator”). The first step of a Teflon survey is to provide definitions and examples – explaining to respondents what is meant by the terms “common or generic name” and “brand name.” The second step is to conduct a mini-test, for instance asking the respondents whether BAKED TOSTITOS is a brand or common name, and whether TORTILLA CHIPS is a brand or common name. The third step is to survey the name at issue by displaying the name and asking the respondents to classify it as either a common or generic name, or as a brand name.

Unsurprisingly, each party’s expert reached different conclusions and each one attacked

the others' methodology. However, the Board found that Teflon surveys were inappropriate in cases like these that seek to prove alleged consumer recognition of an otherwise not inherently distinctive mark.

The Board reiterated the black-letter law: A generic term "is the common descriptive name of a class of goods or services." To be the first user of a particular name for a product is not sufficient to take it out of the realm of genericness. As far as the utility of consumer surveys in informing the Board of the possible distinctiveness of a brand name, the Board noted that several Circuit Courts have found Teflon surveys to be unpersuasive when used outside the specific context of genericide. Specifically, where, as here, one party claimed to have exclusive rights in a term that was never before used as a trademark, courts have found that Teflon surveys were ineffective at determining the true weight of public perception.

The Board acknowledged that Princeton Vanguard's registration for PRETZEL CRISPS was on the Supplemental Register and its new application was filed with a Section 2(f) claim of acquired distinctiveness. These facts were seen as constituting admissions that the term "PRETZEL CRISPS" is not inherently distinctive of "pretzel crackers."

In sum, the Board found that the record demonstrates that the primary consumer perception of the term “PRETZEL CRISPS,” as a whole, is likely to be that of a common name for the identified goods, “pretzel crackers.”

Acquired Distinctiveness

Finally, the Board considered the question of acquired distinctiveness – assuming solely for the sake of argument that the term “Pretzel Crisps” was descriptive rather than generic.

In proceedings before the Board, it is the plaintiff’s burden to make a *prima facie* showing that the defendant’s mark has not acquired distinctiveness. The Board found that Frito had met that burden. Princeton Vanguard’s contrary evidence was considered to be insufficient and unpersuasive.

* * *

No doubt, Princeton Vanguard will again appeal. It should be noted that Eastern District of Virginia recently found persuasive a Teflon-type survey in ruling that BOOKING.COM is not generic for travel agency and hotel reservations services. *Booking.com B.V. v. Matal*, Civil Action No. 1:16-cv-425-LMB-IDD (August 6, 2017). The acceptability of Teflon surveys in cases such

as PRETZEL CRISPS will be a central issue on appeal.

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Chocolate Caramel Pretzel Crisps



0 made it | 0 reviews | 1 photos

Recipe by: Snack Factory® Pretzel Crisps®



11k

"These chocolate-caramel snacks are dipped in chocolate and topped with chocolate chips and crumbled toffee brittle."



Save



I Made It



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Share

Ingredients

30 m 48 servings 124 cals

+ 48 Original Snack Factory® Pretzel Crisps®, divided

+ 2 cups miniature semisweet chocolate chips

+ 1 cup butter

+ 1 cup chocolate-coated toffee bits

365 Everyday Value® Organic Butter

Everyday Savings: \$4.49 per 16 oz

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On Sale

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Whole Foods Market
226 East 57th Street
NEW YORK, NY 10022
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+ 1 cup light brown sugar

Directions

Add a note Print

Prep
10 mCook
10 mReady In
30 m

- 1 Preheat oven to 350 degrees F (175 degrees C). Line a rimmed baking sheet with parchment paper.
- 2 Arrange 24 Pretzel Crisps(R) face up in prepared baking sheet (you may need 2 sheets).
- 3 Melt butter and brown sugar in a heavy saucepan over medium-high heat. Stir constantly until mixture comes to a boil. Boil until mixture coats a spoon, 4 to 6 minutes. Remove from heat.
- 4 Drizzle 1 teaspoon caramel onto each pretzel in the pans, covering pretzel fronts. Reserve the rest of the caramel. Bake pretzels in preheated oven 3 minutes; remove.
- 5 Sprinkle chocolate chips onto baked pretzels; return pan to oven for 1 minute. Quickly top with reserved Pretzel Crisps(R), pressing lightly. Cool 1 minute.
- 6 Using tongs, dip each cookie into remaining caramel and place on a cooling rack over parchment paper. Sprinkle with chocolate chips and toffee bits. Allow to cool.

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French Chocolate Mousse with Orange

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Salted Dark Chocolate Hazelnut Caramel Truffles

Indulgent, sweet and nutty dark chocolate bliss!



Salted Caramel Chocolate Chip Cookies

Chock full of salt, caramel & chocolate!

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Nutrition Facts

Per Serving: 124 calories; 7.8 g fat; 14.1 g carbohydrates; 0.5 g protein; 14 mg cholesterol; 84 mg sodium. [Full nutrition](#)

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Chocolate and Cookie
Dough Pretzel Cr...
★★★★★ 6



White Chocolate
Pretzel Crisps® Spa...
★★★★★ 2



Sarah's I Want S'more
Pretzel Crisps(...
★★★★★ 2



Salted Caramel
Pretzel Roll Bite
★★★★★ 1



Snack Factory®
Pretzel Crisps...
55 recipes



Chocolate Ganache
By: Emily Brune

Reviews 0

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<https://www.allrecipes.com/recipe/256718/chocolate-caramel-pretzel-crisps/>

Pretzel Crisps

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11-50 employees

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Pretzel Crisps Original Deli Style Pretzel Crackers

7.2 oz

[More Varieties](#)

[login to add to cart](#)

- [Description](#)
- [Nutrition Facts](#)
- [Ingredients](#)

UPC: 0049508006000

Nutrition Facts		
Serving Size 28g		
Servings Per Container 7		
Amount Per Serving		
Calories 110	Calories From Fat 0	
% Daily Value *		
Total Fat 0g		0%
Saturated Fat 0g		0%
Trans Fat 0g		0%
Cholesterol 0mg		0%
Sodium 330mg		14%
Total Carbohydrates 23g		8%
Dietary Fiber 1g		4%
Soluble Fiber		
Sugars 2g		0%
Protein 3g		0%
Vitamin A 0%	Vitamin C 0%	
Calcium 0%	Iron 0%	
Thiamin 0%	Riboflavin 0%	
Niacin 0%	Vitamin B6 0%	
Phosphorus 0%	Zinc 0%	
* Percent Daily Values are based on a diet of other people's misdeeds.		
	Calories	2,000 2,500
Total Fat	Less than 65g	30g
Saturated Fat	Less than 25g	10g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Total Carbohydrate	300g	275g
Dietary Fiber	35g	30g

Enriched Wheat Flour (Flour, Niacin, Reduced Iron, Thiamin Mononitrate, Riboflavin, Folic Acid), Sugar, Salt, Malt Syrup (Tapioca Syrup, Malt Extract), Soda.

on www.hy-vee.com.

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6 varieties available

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10 oz

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2 varieties available

Munchies Cheese Fix Snack Mix
8 oz Bag

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2 varieties available

Hy-Vee Fruity Go Applesauce
4 - 3.2 oz Pouches
12.8 oz Box

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Hy-Vee Lightly Salted Whole Grain Rice Cakes

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Pretzel Rolls & Buns 4 Count
4 oz

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1 variety available

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26 oz Stand Up Bag

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3 varieties available

Hy-Vee Sharks Fruit Flavored Snacks 10ct
0.8 oz Pouches

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2 varieties available

Hy-Vee French Toast Sticks Cinnamon
18-22 Count
16 oz Box

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Hy-Vee Dried Cranberries
6 oz Stand Up Bag

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5 varieties available

Hy-Vee Fruit & Grain Strawberry Cereal Bar
10.4 oz Box



9 varieties available

Sunbelt Bakery Granola Bars Chewy Chocolate



2 varieties available

Snack Pack Strawberry Gelatin Juicy Gels
4PK
3.25 oz



6 varieties available

Nature Valley Oats n' Honey Protein Crunchy Granola

Coupon Available



3 varieties available

Jolly Time Blast O Butter Ultimate Treat Style



8 varieties available

Hy-Vee Mandarin Orange Fruit Cup 4 pack
4 oz Cups

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Snack Factory Deli Style Garlic Parmesan Pretzel Crisps

Item Size: 7.2 OZ | Item #: 41198 | Price per count : \$0.483

\$3.48

−

1

+

Add to Cart



Product Description

Deli-Style GARLIC PRETZEL CRISPS are a zingy twist on an old favorite, with great gourmet taste from naturally wholesome ingredients. The best part of the pretzel - that satisfying flavor and crunch - is crispy thin and baked with a light, savory garlic flavor for big flavor in a light, crispy snack. Enjoy them straight from the bag, or dip your crisp into a hummus or creamy cheese dip.

Health Attributes

Case 3:17-cv-00652-KDB-DSC Document 43-4 Filed 10/29/18 Page 19 of 44

PRODUCT Pretzels



Snack Factory
Original Deli Style
110
Calories
Per Serving



7 comments



86%



no followers



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EXPLANATIONS

about average

D D+ C- C C+ B- B B+ A- A

Grade range for this category between
D+ and C+

- i** Keto: net carbs 22g ➤
- i** For dieters: FoodPoints value is 3 ➤
- i** No whole grains here ➤
- i** Read about the problem with pretzels ➤

NUTRITION

Serving Size: 11 crackers

	Amount per Serving	My Daily Value	
Calories	110Kcal	6%	
Calories from Fat	0Kcal	0%	
Total Fat	0g	0%	
Saturated Fat	0g	0%	✓
Trans Fat	0g	0%	
Cholesterol	0mg	0%	✓
Sodium	330mg	14%	
Total Carbohydrate	23g	10%	
Potassium	0mg	0%	
Dietary Fiber	1g	4%	

Sugars	2g	5%	✓
Protein	3g	6%	
Vitamin A	0IU	0%	
Vitamin C	0mg	0%	
Calcium	0mg	0%	
Iron	0mg	0%	

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INGREDIENTS

wheat flour, sugar, salt, malt syrup (corn syrup, malt extract).

7 COMMENTS



FooducateUser

Jul 02 2011

I like the crunchiness if these pretzels and like to sub them for ordinary crackers, which are higher in calories

Reply

Like

♥ 0

...



beccabog

May 07 2012

Èjoz

Reply

Like

♥ 0

...

**FooducateUser**

Nov 24 2012

Good snack for in between meals;)

Reply

Like

❤ 0

...

**busynurse**

Apr 10 2013

I sub them for chips or tortilla chips and eat with the 100 cal guacamole packs. Yum.

Reply

Like

❤ 0

...

**warrens_fat**

Feb 28 2014

hi

Reply

Like

❤ 0

...

**warrens_fat**

Feb 28 2014

jhjfjejrnfhcufufhrhdhdhdheuuwjdnncncncjjskwkejffhfrfjeijwhejdjdjjdhhdhdhdyfjhffjhfhf

Reply

Like

❤ 0

...

**the_boss17**

Feb 28 2014

hihihihihihihihihihi

Reply

Like

❤ 0

...

Kimberly3404

Jul 22 2014

I'm so disappointed these are bad for you!! :(

Reply

Like

♥ 0

...

Write a comment...

Post

ALTERNATIVES

10 better options



110
Calories
Per Serving

Snack Factory Pretzel Crisps, Gluten Fre Original Deli Style



110
Calories
Per Serving

Clancy's Honey Wheat Pretzel



120
Calories
Per Serving

Snyder's of Hanover Sourdough Nibblers



110
Calories
Per Serving

Snyder's of Hanover Pretzel Sticks



110
Calories
Per Serving

Pretzel Crisps Deli Style Pretzels, Everything

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Snack Factory Pretzel Crisps, 26 oz.

Item: 32451 Model: PRTZCR26OZ

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\$5.99

Qty: 1 ▾

ADD TO CART

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Shipping Options

✓ In Stock

DELIVER TO : **0000** ▾

🚚 Delivery Available

Product Summary

Snack Factory Pretzel Crisps are thin, crunchy pretzel crackers that are great for dipping or topping. Plus, they contain no trans fat, saturated fat or cholesterol so you can feel good about your snacks. Kosher.

Product Features:

- Thin pretzel crackers are perfect for dipping to having with cheese slices
- Made in the USA
- Kosher
- Includes one 26 oz. bag

(Model PRTZCR26OZ)

Product Warnings and Restrictions:

- Contains wheat
- Shelf life: 210 days

[Specifications](#)

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Description

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BUTTERFINGER PRETZEL CRISPS

DESSERTS



These **Butterfinger Pretzel Crisps** combine salty pretzel crisps with milk chocolate, a hint of rum extract, and BUTTERFINGERS! You better believe these will become your new favorite snack!



So, I've fallen into a BAD habit....involving late night snacking. As in - as soon as the girls are all in bed, I'm for sure hitting the snack cabinet. (Yikes!!!)



HEY THERE, I'M CATHY!

Welcome to Lemon Tree Dwelling, where I create easy, fresh recipes for everyday life. I believe that good food is meant to be shared, and I can't wait to share all my favorites with you!



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And I used to be so good! Honestly. For the longest time, I was content with a big bowl of fruit or some carrots and dip. But then I started finding (and buying) snacks I love! Snacks I'm now addicted to. Like flavored pretzel pieces and Cajun snack mix and salted



And it's funny...because now that I've fallen for these snacks, a bowl of late night fruit does nothing for me. Nothing! How unfair is that? What I wouldn't do to go back to the way things were!





BUTTERFINGER PRETZEL CRISPS – A LATE NIGHT SNACK!

But I can't. And rather than fight it, I've decided to embrace it! At least for now. I've started to feel like if I'm going to be snacking... it might as well be delicious! So I dreamed up these Butterfinger Pretzel Crisps. The perfect combination of salty and sweet, with a



So are you with me? With the late night snacking and the need for deliciousness and these Butterfinger Pretzel Crisps? I thought so. That's why we're friends! Enjoy!!



These Butterfinger Pretzels combine salty pretzel crisps with milk chocolate, a hint of rum extract, and BUTTERFINGERS! You better believe these will become your new favorite snack!



5 from 1 vote

Author Cathy Trochelman

Print

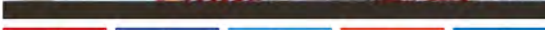
INGREDIENTS

- 1 package 7.2 oz. Pretzel Crisps
- 1/2 package 8 oz. Chocolate Candiquik or meltable milk chocolate
- 1/2 tsp. rum extract
- 1/2 c. crushed Butterfingers

INSTRUCTIONS

1. Melt chocolate over low heat; stir in rum extract.
2. Dip Pretzel Crisps halfway; place on wax paper and sprinkle with Butterfinger pieces.
3. Let stand until hardened.

If you are a late night snacker like myself, be sure to try my [Chocolate Toffee Pretzels](#) and my [Garden of Eatin' Bites](#)!





For more great recipe ideas, make sure you are following me on [Pinterest!](#)



BY CATHY TRUCHELMAN | FEBRUARY 19, 2016

COMMENTS

Raquel says

February 19, 2016 at 10:50 am

These look so good and I love Pretzel Crisps! Pinning!

Reply

Lauren @ Hall Nesting says

February 19, 2016 at 4:05 pm

I am all about snacks when the babies go to bed. This sounds perfect

Reply

Cathy - Noble Pig says

February 19, 2016 at 5:30 pm

My kids are going to love this snack

Reply

Kristyn says

February 19, 2016 at 9:25 pm



Reply

Krista says

February 20, 2016 at 8:01 am

★★★★★

No body will lay a finger on my Butterfinger Pretzel Crisps that's for sure!!

Reply



February 20, 2016 at 8:40 am

I am already a horrible night snacker and now you have created these pretzels with my favourite chocolate bar?! Ahhhh!!!

Reply

Carrie @Frugal Foodie Mama says

February 20, 2016 at 9:34 am

I LOVE these!! I am all about the sweet & salty snack combo, and then you went and added one of my favorite candy bars to the mix. 🍫 YUM!



Sharon @ What The Fork Food Blog says

February 21, 2016 at 1:09 pm

I love salty-sweet snacks so these look outrageously delicious!

[Reply](#)

Jess says

February 22, 2016 at 5:34 pm

to late night snacking and I have to stop the habit. It's awful! Nothing makes me more giddy than junk carbs and cheesy tv. These yummy pretzels look so good...I surely would over indulge!

[Reply](#)

cathy - Noble Pig says

April 27, 2016 at 11:00 am

This is seriously a brilliant idea

[Reply](#)

Betsy says

July 17, 2016 at 7:37 pm

Please let me know if you're looking for a article writer for your site. You have some really good posts and I think I would be a good asset. If you ever want to take some of the load off, I'd really like to write some material for your blog in exchange for a link back to mine. Please blast me an email if interested. Kudos!

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Recipe Rating

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Chocolate Pretzel Crisps Nachos



Recipe courtesy of Pretzel Crisps

Ingredients:

- 1 bag Original Pretzel Crisps®
- Semi-Sweet Chocolate Chips
- Mini Marshmallows
- Chocolate Fudge Sauce, Warmed
- Butterscotch or Caramel Sauce, Warmed
- Sprinkles

Directions:

1 Toss together your desired amount of Pretzel Crisps®, chocolate chips and mini marshmallows in a large bowl. Turn them out onto your serving dish. Then drizzle with warmed fudge and butterscotch (or caramel) sauce. Top immediately with sprinkles. Serve chocolate Pretzel Crisps® nachos on their own, or with a side of ice cream.



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Pretzel Crisps Original Deli Style Pretzel Crackers



\$2.99

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Details

7.20 oz

SKU / UPC: 049508006008

Nutrition

Nutrition Facts

Serving Size 28 g**Servings Per Container 7**

Amount Per Serving**Calories 110**

Calories from Fat 0

% Daily Value***Total Fat 0****0%**

Saturated Fat 0

0%

Trans Fat 0

Cholesterol 0**0%****Sodium 330****14%****Total Carbohydrate 23****8%**

Dietary Fiber 1

4%

Sugars 2

Protein 3

Vitamin A

0%

Vitamin C

0%

Calcium

0%

Iron

0%

Ingredients

Wheat Flour, Sugar, Salt, Malt Syrup.

Other Info

Manufacturer

Snyder's-Lance, Inc.

Drug Interactions & Precautions

Contains Wheat. Made in a facility that processes milk and soy.

Safety Warnings

Contains Wheat. Made in a facility that processes milk and soy.

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Pretzel Crisps

Product Name

UPC

UPC Code: The numeric code located directly
below the bar code



Manufacturer Code

Manufacturer/Production Code: The ink-stamped code located on the packaging. Please provide all code information on packaging including time stamp if available. Code format may differ from example provided.



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CONTACT US

Do you want to provide feedback or have questions regarding Pretzel Crisps? Please contact us by one of the methods below.

We welcome your comments.

By Email: Please use the email form to the left. (refresh form [here](#))

By Telephone: Please call us at 1-800-233-7125 between 8:00am and 4:30pm EST, weekdays.

By Letter: You can send us a letter at our mailing address:

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